

1 John R. Benefiel (P 28970)
2 280 Daines Street
3 Suite 100 B
4 Birmingham, Michigan 48009-6244
5 810-644-1455

6 Janice P. Brown (114,433)
7 SELTZER CAPLAN WILKINS & McMAHON
8 2100 Symphony Towers
9 750 B Street
10 San Diego, California 92101
11 619-685-3003
12 Attorneys for Defendant

13 IN THE UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 NEW AGE PRODUCTS, INC.,

16 Plaintiff,

17 v

Civil Action No.
96 2129 J CGA

18 PROGRESSIVE INTERNATIONAL CORPORATION,

19 Defendant.

20 AFFIDAVIT OF JOHN L. WITT

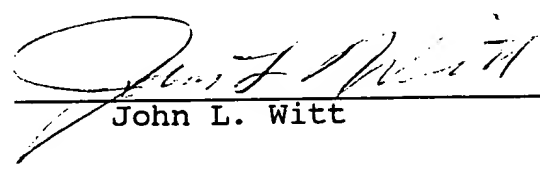
21 I, the undersigned do depose that:

22 I am presently the ^{CEO/Chairman}~~president~~ of Witt Plastics, Inc. of
23 Greenville, Ohio, and have been ^{CEO/Chairman}~~president~~ of Witt Plastics, Inc.
since prior to 1991.

24 2. Attached are true copies of sales documents, kept in the
25 ordinary course of business by Witt Plastics, Inc., numbered
26 Exhibits 1-18. These documents reflect actual sales and shipping
27 transactions made by Witt Plastics, Inc. on the dates indicated on
28 the documents.


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3. Attached as Exhibit 19 is a true copy of a specification sheet received prior to 1991 from Rexene Products Company, giving product data for its resin designated PP9231. Rexene PP9231 was used by Witt Plastics, Inc. to fabricate the extruded sheets for the sales to Schneider Plastics, Inc. corresponding to Exhibits 1-18 above.

Date: 5/27/97 
John L. Witt

STATE OF OHIO)
) ss.
COUNTY OF _____)

Subscribed and sworn before me, this 27 day of May, 1997.

(seal) 
Notary Public

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GREENVILLE, UT PHONE: 513/548-7272
Lakeland, FL Phone: 813/685-6550
FOR CORRESPONDENCE, REFER TO INVOICE NUMBER
No. 27248 # 27248

CUSTOMER'S 1936 DATE 10/31/91 APPROXIMATE SHIP
ORDER NO. ENTERED 10/31/91 SHIPPING DATE 06/91 VIA Common
Carrier

INVOICE DATE 12/04/91

BOLD TO Schneider Plastics, Inc.
220 Bingham Dr. #105
San Marcos, CA 92069

DATE SHIPPED 12/04/91
ROUTED Churchhill
Trucking

SHIP TO: Creative Plastics
6365 Nancy Ridge Road
San Diego, CA 92121

GROSS WEIGHT 2,797#

TERMS: NET 80

P.O.B. Greenville, Oh/Collect

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
APPROX.)	POLYPROPYLENE (9231) EXTRUDED SHEET CLEAR - SMOOTH FINISH			
2,500 lbs.	Extrusion Sheet Size: .010" x 36" x 47"	1.170/lb. (4520 shes) 2525#		\$ 2954.25
INVOICE TOTAL \$				2954.25

FILE COPY

P.O. Box 808 · Greenville, Ohio 45331



CUSTOMERS
ORDER NO.

19481

LATE
ENTERED 4/26/85

APPROXIMATE
SHIPPING DATE

Greenville, OH Phone:
513/548-7272

Lakeland, FL Phone:
813/665-6550

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER

No. 9478

SOLD TO:

SHIP TO:

Industry Products
500 Scatler Road
Piqua, OH 45356

Same as above

SHIP
VIA
Common Carrier
5/31/85

INVOICE
DATE

5/29/85

ROUTED

5/29/85

GROSS
WEIGHT

Dick Lavy Trk
11,094 Lbs.

TERMS:

NET 30

F.O.B. Greenville, OH/Collect

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
10,000 lbs.	REF: Witec Invoice #9283 4/26/85 POLYPROPYLENE (7129) EXTRUDED SHEET BLACK-SMOOTH FINISH			(1712 Shts) Total Lbs Shipped - 9,988#
	Sheet Size: .050" x 56" x 64"			
	Witec Plastics Material	\$.96/lb.	4,994#	\$ 4,794.24
	Industry Products Material	\$.33/lb.	4,994#	\$ 1,648.02
	Grinding Charges on Salvage Material	\$.05/lb.	4,994#	\$ 249.70
THANK YOU		INVOICE TOTAL		\$ 6,691.96

11-11-85

[Handwritten signature]

P.O. Box 808, Greenville, Ohio 45331

Greenville, OH Phone:

513/548-7272

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER



Lakeland, FL Phone:
813/665-6550

No.

22308

CUSTOMER'S
ORDER NO. 110638

DATE
ENTERED 01/31/90

APPROXIMATE
SHIPPING DATE 02/09/90

SHIP
Common
Carrier

INVOICE
DATE

02/23/90

SOLD TO: Placon

P. O. Box 8246

Madison

WI 53708

SHIP TO:

Placon

6096 McKee Road

Madison

WI 53708

TERMS:

NET 30

F.O.B. Greenville, OH/Collect

DATE
SHIPPED 02/22/90
ROUTED Whiteford
Truck
GROSS
WEIGHT 8,459#

(approx.)

7,500 lbs.

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
	POLYPROPYLENE EXTRUDED SHEET Rexene 9231) NATURAL (CLEAR) SMOOTH FINISH			
	Sheet Size: .020" x 16 11/16 Roll		(48 rolls) 0.980/lb. 8059#	\$ 7897.82
INVOICE TOTAL \$				7897.82

ACCOUNTING



Greenville, OH Phone:
513 / 548-7272

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER

Lakeland, FL Phone:
813 / 665-6550

No. 027249

CUSTOMER'S ORDER NO. 1936 DATE ENTERED 10/31/91 APPROXIMATE SHIPPING DATE / /

SHIP VIA

INVOICE DATE 11/11/91

DATE SHIPPED / /

ROUTED

GROSS WEIGHT

SOLD TO: Schneider Plastics, Inc.

220 Blingham Dr. #105

San Marcos,

CA 92069

SHIP TO:

TERMS: NET 30

F.O.B.

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
3,500 lbs.	CLEAR POLYPROPYLENE 9231 RESIN (PURCHASED FOR SCHNEIDER PLASTICS PO #1936)	0.750/lb.	3500#	\$ 2625.00
INVOICE TOTAL				\$ 2625.00

FILE COPY

(513) 548-7272

Order No. 1936

Terms:

~~Name~~ Creative Plastics
6365 Nancy Ridge Rd.
San Diego, CA 92121

[illegible]

Cr. exp. \rightarrow ON BACK

Die Cut - 11 1/2" x 15" 7 in. Sheet Size. - ~~KG 5~~ [?] ~~INDUSTRY~~ [?]

Standard ()
Special — Specify ()

1. **DATA SHEET**

Page 11

P.O. Box 808, Greenville, Ohio 45331

Plastics

Greenville, OH Phone:

714513/548-7272

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER

No. 029439

CUSTOMER'S ORDER NO. Verbal

DATE ENTERED 08/28/92 APPROXIMATE SHIPPING DATE 09/18/92 VIA

Common Carrier DATE INVOICE 09/21/92

Lakeland, FL Phone: 813/665-6550

SOLD TO: Schneider Plastics, Inc.

220 Bingham Dr. #105

San Marcos, CA 92069

SHIP TO:

Creative Plastics

6365 Nancy Ridge Road

San Diego, CA 92121

TERMS: NET 30

DATE SHIPPED 09/21/92
ROUTED Consolidated
Freight
GROSS WEIGHT 2,715#

F.O.B. Greenville, OH/Collect

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
(APPROX.)	POLYPROPYLENE EXTRUDED SHEET CLEAR - SMOOTH FINISH			
2500 lbs.	Sheet Size: .010" x 36" x 47"		(4521 sheets) 2.260/lb. 2541#	\$ 5742.66
INVOICE TOTAL \$				5742.66

FILE COPY

THIS SHIPPING ORDER

must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

RECEIVE, subject to the classifications and lawfully filed tariffs in effect on the date of this Shipping Order.

From **WIT PLASTICS, INC.**

RECEIVED B/L--FREIGHT

At **Greenville, Ohio 45381**

Sept. 21, 19 **92BY**

DESIGNATE WITH AN (X)
TRUCK ☐ FREIGHT ☐

Shipper's No. **18599**

By **Consolidated Freight**

Company

Agent's No.

Consigned to **Creative Plastics, 6365 Nancy Ridge Road**

or street address of consignee—For purpose of notification only.

Destination **San Diego, CA 92121**

State of

County of

Route **SEE SPECIAL BILLING INSTRUCTIONS BELOW--HOT HOT RUSH RUSH**

Delivering Carrier **same**

Vehicle or Car Initial

No.

NO. OF PACKAGES	DESCRIPTION OF ARTICLES, WEIGHTS AND EXCEPTS	WEIGHT (subject to carry)	CLASS OR RATE	CHECK COLUMN
3-skids	Plastic Film Or Sheeting O/T Cellulose, Printed Or Not Printed, In Flat Sheets Not Further Processed Than Cut To Size, Or In Lengths Of Not Less Than 100 Feet In Rolls Not Less Than 3 Inches In Diameter. (Per NMFC 100A, Item 156830) SUB 1 - 15' PCF OR GREATER	2,715#	TL35	
	Plastic Sheet Scrap NOT In Bags, Barrels Or Boxes, TL/ (Per NMFC 100A Item 156830); LTL/156800 (Specify Density)		CL55	
	Plastic Plates, NOT Granules, Lumps, Pellets, Powder Or Solid Mass In Barrels, Boxes, Or Pails, In Multiple-Yard Paper Bags, Or In Packages. (Per NMFC 100A, Item 156800)			
	Send freight bill to:	Schneider Plastics, Inc		
		220 Bingham Dr. #105		
		San Marcos, CA 92069		

3rd Party Billing
Prepared

Per (Signature of Consignor)
If charges are to be prepaid, write or stamp here, "Prepaid."
Agent or Consignee

This bill of lading for this shipment conforms to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 21 of the Consolidated Freight Classification.

C.O.D. SHIPMENT

THIS SHIPMENT IS CORRECTLY DESCRIBED

C.O.D. Amt.
Collection Fee
Total Charges

WIT PLASTICS, INC.
Martindale Rd., P.O. Box 808, Greenville, Ohio 45351

Shipper, Per **Tom Patton**

Agent, Per

Agent must detach and retain this shipping order and must sign the Original Bill of Lading.

2

[illegible]

Exhibit 8
Page 47

WITT PLASTICS, INC.

Greenville, Ohio 45331

P.O. Box 808

(513) 548-7272

BN
BK

Date: 9/28/92 Salesman: _____ Order No. 72121
 Ship: 9/18/92 F. O. B. ☐ PPD. ☒ COLL How Ship Consolidated Terms: _____

Sold To: Schneider Plastics Shipped To: Creative Plastics
731 6365 Nancy Ridge Rd.
San Diego, CA 92121
DIANA (619) 744-5037

Quant.	Color	Material	Gauge	Surface Finish	Width Dim.	Length Dim.	Unit Price
2500#	Clear	Polypropylene	.010	Sm	36	47	\$2.26/lb

Special Comments: _____

Packaging: Standard ()
 Expendable Pallet ()
 Skid ()
 Rolls ()
 Special — Specify ()

Marking: Standard ()
 Special — Specify ()

Material: Virgin ()
 Reprints ()
 Customer Material ()
 Purchase Trim Scrap ()

Requirements: L. P. E.
 Min. Sag () shallow draw
 Min. Sag () deep draw
 Standard () not vacuum formed

Dimensional Tolerances:
 Standard ()
 Length ()
 Width ()
 Square ()
 Gauge ()

End Uses:
 Vacuum Formed ()
 Deep Draw ()
 Shallow Draw ()
 Lithograph ()
 Silk Screen ()

NON-CONFORMANCE REPORT

10/17/92 NC RPT# 1027

1. No. 788 Cust. Name Schneider Plastics

2. On Contacted Rod Thompson P.O. # VERBAA

3. Type 1 Surface Sm Color CLR Job # 21814

4. QID x 36 x 47

5. No. 1394-1396 Compl. only Ret Gds. 1

6. Quantity Involved 1000# On-site visit requested

7. Formers description of non-conformance:

Cracks, Die Lines

Finger Prints

8. Samples being sent? X Yes No

9. Is product need to be replaced? X Yes No

10. Date given for arrival of replacement 10/27/92

11. Argument for pick-up of return:

12. TBA

13. Exhibit 8

14. Page 49

15. Dept/Mach Cause Control Center

16. Code: 540 Code: Code:

17. Name WELBAM 1ST

18. Shift 2ND

19. Inspector SUE/BOB

20. Date issued:

CORRECTIVE ACTION TAKEN:

1. Date Scheduled

2. Date completed

3. Key to Run Sheet

4. in a thicker

5. gauge to prevent

6. PRODUCTION PROBLEMS

7. in the future

8. Date action completed:

9. Assigned responsibility for C/A

10. Mgt. Acct. Sales Pur. Mfg.

11. Qual. Inv. Control Vendor

12. Other

13. Departments notified of C/A

14. Qual. Acct. Part File Vendor File Sales

15. Empl. Mfg. Purchasing Customer Inv. Control

16. Other

17. Date product rec'd Receiver No.

18. Date product inspected Quantity Recv.

19. Condition of returned goods:

20. General cause code # assigned

21. Complaint allowed Yes No (If no submit to M.R.B.)

22. Credit given Yes No

23. Sales Price \$ 226 / LB. Total Cr. \$

24. Labor Cost \$ Est. Indirect cost \$

25. Total Cost \$ Cost charged to dept. no.

26. Product disposition: Grind Dump

27. Date of disposition:

PREVENTIVE ACTION

1. Date Scheduled

2. Date completed

3. Key to Run Sheet

4. in a thicker

5. gauge to prevent

6. PRODUCTION PROBLEMS

7. in the future

8. Date action completed:

9. Assigned responsibility for P/A

10. Mgt. Acct. Sales Pur. Mfg.

11. Qual. Inv. Control Vendor

12. Other

13. Departments notified of P/A

14. Qual. Acct. Part File Vendor File Sales

15. Empl. Mfg. Purchasing Customer Inv. Control

16. Mgt. Other

17. Date product rec'd Receiver No.

18. Date product inspected Quantity Recv.

19. Condition of returned goods:

20. General cause code # assigned

21. Complaint allowed Yes No (If no submit to M.R.B.)

22. Credit given Yes No

23. Sales Price \$ 226 / LB. Total Cr. \$

24. Labor Cost \$ Est. Indirect cost \$

25. Total Cost \$ Cost charged to dept. no.

26. Product disposition: Grind Dump

27. Date of disposition:

P.O. Box 808, Greenville, Ohio 45331

Greenville, OH Phone:

FOR CORRESPONDENCE, REFER
TO INVOICE NUMBER

TIW513/548-7272

At Lakeland, FL Phone:

813/865-6550

No. 029693

CUSTOMER'S VERBAL DATE 10/13/92 APPROXIMATE 10/27/92 SHIP Common

ORDER NO. 029693 ENTERED 10/13/92

INVOICE DATE 10/20/92

DATE 10/20/92

ROUTED Motor

ROUTED Motor

GROSS WEIGHT 2,900#

SHIP TO: Creative Plastics

6365 Nancy Ridge Road
Greenville, OH 45331
CA 92121

TERMS: NET 80

FOB Greenville, OH/PREPAID

QUANTITY ORDERED

UNIT PRICE

QUANTITY SHIPPED

EXTENSION

(APPROX.)

POLYPROPYLENE EXTRUDED SHEET
CLEAR, SMOOTH FINISH

2500 LBS.

SHEET SIZE: .010" x 36" x 47"

(4525 shes)
2.260/lb. 2609#

\$ 5896.34

INVOICE TOTAL

\$ 5896.34

FILE COPY

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استاذ

31 BOB THOMPSON (419) 744-3037 SN-1290, CH-92121

[illegible]

Special Comments:

Customer Needs Good Surface on Sheet
Run Gauge to the plus side if this
will help.

Packaging:

Standard	()
Expendable Pallet	()
Skid	()
Rolls	()
Special — Specify	()

Marking:

Standard ()
Special — Specify ()

Material: Virgin	()	_____
Regrinds	()	_____
Customer Material	()	_____
Purchase Trim Scrap	(@)	_____

S Requirements: L. P. E.
Min. Sag () shallow draw
Min. Sag () deep draw
Standard () not vacuum formed

Dimensional Tolerances:

Standard	()	—
Length	()	—
Width	()	—
Square	()	—
Gauge	()	—

End Uses:

Vacuum Formed	()
Deep Draw	()
Shallow Draw	()
Lithograph	()
Silk Screen	()
Flat Sheet	_____

P.O. Box 808 • Greenville, Ohio 45331

Plastics

Greenville, OH Phone:

TTV 513/548-7272

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER

IA Lakeland, FL Phone:
813/665-6550

No. 030282

CUSTOMER'S NAME: DATE: ORDER NO. 12/02/92 ENTERED 12/02/92 SHIPPING DATE 12/18/92

Handwritten: 12/18/92

SOLD TO:

SHIP TO:

TERMS:

Greenville Plastics, Inc.
3200 Birmingham Dr. #106
San Diego, CA 92121

F.O.B. Greenville, OH/collect

INVOICE DATE 12/21/92
DATE SHIPPED 12/21/92
ROUTED WATKINS

GROSS WEIGHT 5.437#

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
1000 LBS.	POLYPROPYLENE EXTRUDED SHEET CLEAR - SMOOTH FINISH	1.600/LB.	6030 SHTS	8152.00
SHEET SIZE: .015" X 36" X 47"				
INVOICE TOTAL				\$ 8152.00

Handwritten: 12/18/92
3158.00
12/18/92

FILE COPY

[illegible]

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Exhibit 8
Page 54

STOMER: 235 Lexington Dr
DRESS: San Marcos, CA 92069

DATE: 12/1/70
PHONE NO.: 619-752-7240
PERSON CONTACTED: Red Thompson

RIAL: Polypropylene (9231)
COLOR: Clear

ADDITIVES: _____
SURFACE: Smooth

SHEET/ROLL SIZES:

.015" x 36" x 47"

TOLERANCES:

GAUGE	+	-
WIDTH	+	-
LENGTH	+	-
SQUARE	+	-

MENTS: Die Cut Application

QUANTITIES/PRICE COMPUTATIONS:

5m# / 1000 / 50% / .75 / 350# / 10 lbs = \$1.60 / #
m# / 1000 / 50% / .65 / 350# / 10 lbs = \$1.44 / #
m# / 1000 / 50% / .62 / 350# / 10 lbs = \$1.32 / #
m# / 1000 / 50% / .62 / 350# / 10 lbs = \$1.27 / #
m# / 1000 / 50% / .59 / 350# / 10 lbs = \$1.22 / #

ECIAL REQUIREMENTS/REMARKS: FOB: Greenville, OH

MPLE REQUESTED: _____

TERIAL: _____ COLOR: _____

EET SIZE: _____

RFACE: _____ SHEETS/ROLLS: _____ LBS: _____

REXENE® RESINS**POLYPROPYLENE****PRODUCT DATA****TYPE:** PP 9231**DESCRIPTION:** Clarity, toughness, chemical, solvent, stress crack resistance; (FDA*)**APPLICATIONS:** Sheet extrusion for food, health and beauty aid products; general purpose extrusion and thermoforming where good clarity is desired.

TYPICAL PROPERTIES	ASTM TEST METHOD	VALUE	UNIT
MELT FLOW RATE	D 1238	1.0	DG/MIN
DENSITY	D 1505	.900	GM/CM ³
TENSILE	D 638		
YIELD STRENGTH		3,900	PSI
ULTIMATE ELONGATION		>300	%
MODULUS		150,000	PSI
FLEXURAL MODULUS	D 790	145,000	PSI
DEFLECTION TEMP. @ 66 PSI	D 648	91	°C
ROCKWELL HARDNESS "R"	D 785	80	
NOTCHED IZOD	D 256	1.8	FT-LB/IN

* Conforms to FDA regulation 21 CFR 177.1520

4/88

REXENE

Specialists in specialty resins

5005 LBJ FREEWAY • OCCIDENTAL TOWER • DALLAS, TX

CENTRAL REGION
1515 Woodfield Road, 7550NORTHERN REGION
322 Route 45 West, Suite 230
Farmington, CT 06034-1007SOUTHERN RI
2849 Paces Ferry Rd
Atlanta, GA 30329Exhibit 8
Page 57